No. 91-474

In The

Supreme Court of the United States

October Term, 1991

VELMA MARTIN, on behalf of herself and all others similarly situated,

Petitioner,

v.

LOUIS W. SULLIVAN, Secretary of the Department of Health and Human Services,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

REPLY BRIEF FOR THE PETITIONER

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The petition stressed that the decision below conflicts with decisions of this Court and of the New York Court of Appeals, and, significantly, that the contrary holding of the court below was attainable only because that court declined to follow the basic rules of statutory construction. In particular, it ignored the ordinary meaning of the crucial statutory term "received", thus freeing it to accept a much broader meaning of that word – unlike the holdings by this Court and the New York Court of Appeals which considered the same word in similar welfare schemes and reached quite different results.

In his Brief for the Respondent in Opposition (Br. in Opp.), the Secretary of Health and Human Services (Secretary) argues that the prior decisions are not relevant to the decision below, relies on a decision which is wholly unrelated to this case, and attempts to rebut petitioner's analysis of statutory construction by the most conclusory analysis. These arguments do not effectively respond to petitioner's stated reasons for plenary review of the decision below.

1. The Secretary purports to distinguish *Philbrook v. Glodgett*, 421 U.S. 707 (1975), on the ground that the plaintiffs in that case had not applied for the unemployment compensation for which they were eligible, whereas the petitioner here had applied for and was receiving Railroad Retirement Board (RRB) benefits (as reduced by the amounts not paid in order to recover the overpayment). The distinction, while factually true, is of no consequence in the context of this petition.

The relevant point of *Philbrook* is not the eligibility status of the recipient for the benefits at issue; rather, it is that, in no uncertain terms, this Court gave the word "received" its common, ordinary meaning, and rejected the Secretary's suggestion that the term could be stretched to encompass a much broader meaning. Indeed, the Court observed that, where Congress intended (at another point in the statute) that "received" should mean "qualified to receive", it included a statement to that effect in the legislative history. 421 U.S. at 716-718. In the absence of such modifying language, however, "received" had to be narrowly construed.

Philbrook prohibited the Secretary from counting as income received, in the Aid to Families with Dependent Children (AFDC) program, unemployment benefits to which the parent was entitled but for which he had not applied and therefore was not in fact receiving. Consequently, it is directly relevant to this situation, where the issue is the counting of RRB benefits for purposes of the Supplemental Security Income program when those RRB benefits are not in fact paid to the recipient. In each instance, it is irrelevant why the benefits are not in fact received; the cases are linked because the word "received", in both situations, demands that the benefits only be considered when the beneficiary actually has them.

In the course of disputing the significance of *Philbrook*, the Secretary also inexplicably raises *Heckler v. Turner*, 470 U.S. 184 (1985), a case not relied on by the court below and of no relevance to the issues here presented. *Turner* evaluated not the term "received" but, rather, the narrow question of whether tax withholdings were encompassed within a flat disregard for earned income added by a discrete amendment to the AFDC statute, and therefore could not be separately disregarded. 470 U.S. at 186. This Court concluded that, along with other specific work expense deductions which were now a part of the flat disregard for earned income, tax withholdings were no longer to be disregarded. *Id.* at 195. In the context of the amended AFDC statute, income was thus defined to include tax withholdings. *Id.* at 194.

Indeed, contrary to the Secretary's suggestion that *Turner* supports his position here, if anything it is supportive of petitioner: the implication of the Court's reasoning

is to endorse the general principle of actual availability, which is only breached by a specific statutory exception, such as that in *Turner*. In any event, *Turner* involves the definition of "income", not the meaning of "received". The latter word is not there at issue; accordingly, *Philbrook*, not *Turner*, provides the relevant guidance for this case.

2. Even the Secretary concedes that "the issue in *Wasservogel [v. Blum*, 54 N.Y.2d 100 (1981)] is similar to the question here . . . . " Br. in Opp. at 8. He offers two unconvincing reasons, however, to suggest that there is no conflict between the two decisions, which reach diametrically opposite conclusions.

First, he notes that the cases involve different programs. Again, however, that is a distinction without a difference. The cases are otherwise identical and present the same issue: whether benefits withheld in one program are "received" for purposes of determining the countable income in another program. The New York Court of Appeals unanimously answered that in the negative, based on the meaning of the word "received". 54 N.Y.2d at 103.

Secondly, the Secretary purports to discern significance in the fact that the Court of Appeals, in dictum, relied as well on a regulation to support its analysis in *Wasservogel*. He theorizes that the regulation here, which does not embrace the same principle as that in *Wasservogel*, necessarily leads to a different result. This is blatantly circular reasoning, however, for the very issue of this case is the validity of the regulation on which the Secretary seeks to distinguish *Wasservogel*. The Secretary

is in effect arguing that the decision below, which upholds the validity of the regulation, must be correct *because* of the regulation.

The point of *Wasservogel* is that the statutory term "received" means "received", not "constructively received". The Secretary has no substantive response to that, and offers no valid basis on which to distinguish that case from this one.

3. Finally, the Secretary attempts to thwart the impact of petitioner's discussion of the rules of statutory construction. As she demonstrated, correct application of those rules requires that "received" be given its dictionary definition, a meaning which does not include "constructive receipt".

First, the Secretary ignores petitioner's step-by-step analysis for construing "received" by the simple expedient of changing the issue of the case – to the meaning of "income". Br. in Opp. at 9. Of course, this allows the Secretary to argue that nothing in the statute precludes treating withheld benefits as income. The validity of that argument, however, is irrelevant, for the issue here is not the broad definition of income, but whether the narrowing term "received" in 42 U.S.C. § 1382a(a)(2)(B) is to have any meaning and significance.

The Secretary then purports to face that real issue – but again refuses to directly confront petitioner's statutory construction analysis. Instead, he makes the conclusory statement that " 'received' is inherently ambiguous – receipt can be actual or constructive." *Id.* at 9. Of course, that unsupported allegation entirely begs the question. It also ignores petitioner's road map

through the rules of statutory construction, which repudiates the suggestion that "received", by itself, is ambiguous; its ordinary, dictionary definition requires possession or control. See Petition at 14. The Secretary simply detours around the significance of that point and this Court's numerous decisions requiring adherence to that definition.[1]

* * *

The decision below is in conflict with two unanimous decisions from this Court and New York's highest court interpreting the precise statutory term at issue, and it advances no explanation as to why its analysis should prevail over the principles of construction outlined and followed repeatedly by this Court. The petition for a writ of certiorari should therefore be granted.

Respectfully submitted,

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[1] Again, the Secretary begs the question when he relies on the fact that the regulation at issue adopts the broad meaning of "received". Br. in Opp. at 9-10. This circular reasoning only serves to emphasize the weakness of the Secretary's argument; he is contending that "received" must include "constructive receipt" because that is what the regulation at issue contemplates.

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